

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Wurtzel	Team: Squad #6	CCRB Case #: 201706534	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/22/2017 5:40 PM, Wednesday, 08/09/2017	Location of Incident: Marion Avenue and East 194th Street	Precinct: 52	18 Mo. SOL 1/22/2019	EO SOL 1/22/2019	
Date/Time CV Reported Thu, 08/10/2017 1:09 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 08/10/2017 1:09 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Vanduzer	02650	955618	052 PCT
2. SGT Amadeo Oktrova	01914	949413	052 PCT
3. POF Gina Mestre	11607	955191	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Frank Aliffi	00234	939856	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Amadeo Oktrova	Abuse: On July 22, 2017, Sergeant Amadeo Oktrova stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SGT Amadeo Oktrova	Abuse: On July 22, 2017, Sergeant Amadeo Oktrova stopped § 87(2)(b)	
C.SGT Amadeo Oktrova	Abuse: On July 22, 2017, Sergeant Amadeo Oktrova frisked § 87(2)(b)	
D.POF Gina Mestre	Abuse: On July 22, 2017, Police Officer Gina Mestre stopped an individual.	
E.POF Gina Mestre	Abuse: On July 22, 2017, Police Officer Gina Mestre frisked an individual.	
F.SGT Amadeo Oktrova	Abuse: On August 9, 2017, Sergeant Amadeo Oktrova stopped the vehicle in which § 87(2)(b) was an occupant.	
G.POM Brian Vanduzer	Abuse: On August 9 2017, Police Officer Brian Vanduzer frisked § 87(2)(b)	
H.POF Gina Mestre	Abuse: On August 9, 2017, Police Officer Gina Mestre frisked § 87(2)(b)	
I.POF Gina Mestre	Abuse: On August 9, 2017, Police Officer Gina Mestre searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(4-b), § 87(2)(g)		
§ 87(2)(g)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

Case Summary

On August 10, 2017, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System, on behalf of her friends § 87(2)(b) and § 87(2)(b).

On July 22, 2017, at approximately 3:00 p.m., Sergeant Amadeo Oktrova of the 52nd Precinct pulled over a vehicle driven by § 87(2)(b) in which § 87(2)(b) and a third male named § 87(2)(b) were passengers (**Allegation A: Abuse of Authority – Vehicle Stop, § 87(2)(g)**). Sergeant Oktrova detained and frisked § 87(2)(b) who was the front passenger (**Allegation B: Abuse of Authority – Stop, § 87(2)(g)** and **Allegation C: Abuse of Authority – Frisk, § 87(2)(g)**). Police Officer Gina Mestre of the 52nd Precinct detained and frisked § 87(2)(b) who was the rear passenger (**Allegation D: Abuse of Authority – Stop, § 87(2)(g)** and **Allegation E: Abuse of Authority – Frisk, § 87(2)(g)**). § 87(2)(b) spoke with Police Officer Jose Santiago of the 52nd Precinct at the stationhouse and was released from the stationhouse in exchange for surrendering a firearm used in a shooting.

On August 9, 2017, at approximately 5:00 p.m., Sergeant Oktrova stopped a vehicle which was driven by § 87(2)(b) and in which § 87(2)(b) was the sole passenger (**Allegation F: Abuse of Authority – Vehicle Stop, § 87(2)(g)**). Police Officer Vanduzer frisked § 87(2)(b) and Police Officer Mestre frisked § 87(2)(b) (**Allegation G: Abuse of Authority – Frisk, § 87(2)(g)**) (**Allegation H: Abuse of Authority – Frisk, § 87(2)(g)**). Police Officer Mestre conducted a search of § 87(2)(b)'s vehicle (**Allegation I: Abuse of Authority – Vehicle Search, § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) were arrested and later released from the 52nd Precinct stationhouse with summonses for § 87(2)(b) (**Board Review 02-03**).

§ 87(4-b), § 87(2)(g)

No video was obtained for either incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: On July 22, 2017, Sergeant Amadeo Oktrova stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(g)

§ 87(2)(b) stated that he had driven around the vicinity of East 194th and Marion Avenue in the Bronx for approximately ten minutes looking for a parking space before parking adjacent to a fire hydrant and leaving the car idling with his friends, § 87(2)(b) and § 87(2)(b) inside. Police Officer Vanduzer and Sergeant Oktrova provided consistent accounts of observing this driving pattern but stated that § 87(2)(b) failed to indicate multiple times.

Police Officer Vanduzer stated that he recognized § 87(2)(b) as having an open Complaint Report prior to detaining his vehicle. Sergeant Oktrova only recognized § 87(2)(b) as having an open Complaint Report after approaching the stopped vehicle. Police Officer Mestre stated that she did not personally observe traffic infractions and did not know the reason for the vehicle detainment.

§ 87(2)(g)

§ 87(2)(b) The Complaint Report that was referred to by Police Officer Vanduzer indicated that an arrestee named ‘§ 87(2)(b)’ had purchased a controlled substance from an “unapprehended known dealer,” (**Board Review 04**). Police Officer Vanduzer indicated that § 87(2)(b) was the “dealer” referred to in the Report and cited this Complaint Report as justification for pulling § 87(2)(b) over in addition to his moving violations.

The Complaint Report, however, does not contain § 87(2)(b)’s name or a description of his person. Furthermore, neither Sergeant Oktrova nor Police Officer Mestre observed § 87(2)(b) prior to approaching the vehicle. Sergeant Oktrova stated that he had not personally seen the Complaint Report prior to his CCRB interview and noted that the omission of § 87(2)(b)’s name on the report was an error by Police Officer Santiago, the Field Intelligence Officer who filed the report. Police Officer Santiago retired from the NYPD after this incident (**Board Review 01**). Because § 87(2)(b) was ultimately released by Police Officer Santiago in exchange for a firearm, no Arrest Report was prepared to verify § 87(2)(b)’s association with the Complaint Report.

§ 87(2)(g)

Allegation (B) Abuse of Authority: On July 22, 2017, Sergeant Amadeo Oktrova stopped

§ 87(2)(b)

It is undisputed that Sergeant Oktrova detained § 87(2)(b) during the vehicle stop and that § 87(2)(b) was not considered free to leave during this time.

Sergeant Oktrova stated that he smelled an odor of marijuana as he approached the vehicle. This claim was corroborated by Police Officer Vanduzer but denied by Police Officer Mestre. Sergeant Oktrova stated that due to the odor of marijuana, all three men were considered detained. The officers did not document the odor of marijuana in their memo books and did not recover any marijuana from the vehicle. Neither § 87(2)(b) nor § 87(2)(b) acknowledged the presence of marijuana in the vehicle on the incident date.

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: On July 22, 2017, Sergeant Amadeo Oktrova frisked

§ 87(2)(b)

The investigator consulted with a CCRB attorney regarding this allegation.

It is undisputed that Sergeant Oktrova approached the passenger side of § 87(2)(b)'s vehicle and asked § 87(2)(b) to step out. Sergeant Oktrova then patted down § 87(2)(b) in the vicinity of his waistband and legs.

Sergeant Oktrova smelled an odor of marijuana as he approached the vehicle – a claim corroborated by Police Officer Vanduzer but denied by Police Officer Mestre. Sergeant Oktrova did not cite the odor of marijuana as a reason for patting down § 87(2)(b).

Sergeant Oktrova further stated that he believed that § 87(2)(b) was nervous at the time of the stop because his chest was rising and falling at an accelerated pace. Sergeant Oktrova observed that § 87(2)(b)'s arms were resting on his waistband while he sat in the vehicle. § 87(2)(b) was reluctant to move his arms when asked and quickly reverted to his position after moving his arms away from his waist. Sergeant Oktrova cited § 87(2)(b)'s furtive arm movements as indicative of an attempt at concealment.

Sergeant Oktrova further cited § 87(2)(b)'s sweating as an indication of nervousness and justification for a frisk but volunteered that this might have been related to the warm weather on the incident date. Sergeant Oktrova did not observe apparent bulges on § 87(2)(b) as he exited the vehicle.

An officer may frisk an individual if they reasonably suspect that the individual possesses a weapon. People v. De Bour, 40 N.Y. 2d 210 (1976) (**Board Review 05**). Furtive movements and nervous behavior, absent more, will not provide the police with a founded suspicion of criminality. People v. Garcia, 20 N.Y. 3d 317 (**Board Review 06**). A frisk is permissible only if the police possess a particularized reasonable suspicion that the suspect is armed and may be dangerous. People v. Russ, 61 N.Y. 2d 693, 695 (1984) (**Board Review 07**). The odor of marijuana smoke alone is sufficient to provide police officers with probable cause to search an automobile and its occupants, People v. Chestnut, 43 A.D. 2d 260 (1974) (**Board Review 12**).

§ 87(2)(g)

Sergeant Oktrova did not specifically provide any reasons aside from § 87(2)(b)'s perceived nervousness and his furtive movements as justification for a frisk. Sergeant Oktrova also stated that he did not observe a bulge on § 87(2)(b)'s person.

§ 87(2)(g)

Allegation (D) Abuse of Authority: On July 22, 2017, Police Officer Gina Mestre stopped an individual.

Allegation (E) Abuse of Authority: On July 22, 2017, Police Officer Gina Mestre frisked an individual.

The investigator consulted with a CCRB attorney regarding these allegations.

It is undisputed that the rear passenger in § 87(2)(b)'s vehicle – § 87(2)(b) – was drinking from an open bottle of beer and was detained and frisked by Police Officer Mestre.

Police Officer Mestre observed § 87(2)(b) hiding a bottle of beer under a seat in the vehicle and further stated that § 87(2)(b) admitted that he was drinking. Police Officer Mestre stated that § 87(2)(b) was shifting around in his seat prior to her approaching and that he appeared nervous while speaking with her. Police Officer Mestre believed he was nervous out of fear that he would be issued an open container summons. Police Officer Mestre used her discretion not to issue a summons to § 87(2)(b) and permitted him to finish his beer in this public setting.

Police Officer Mestre had § 87(2)(b) exit the vehicle because of movements she had observed while approaching the vehicle. Police Officer Mestre stated that these movements aroused her suspicion of criminality but that she never felt concerned for her safety. Police Officer Mestre patted § 87(2)(b) down in the vicinity of his waistband and stated that she did this because of his open container. PO Mestre did not observe anything on § 87(2)(b) person that she believed could have been a weapon as he exited the vehicle.

Section 10-125 of the New York City Administrative Code states that the consumption of alcohol is prohibited in public places, including the interior of stationary vehicles (**Board Review 08**). An officer may stop a person if they have reasonable suspicion that the person has committed, is committing, or is about to commit a crime. *People v. De Bour*, 40 N.Y. 2d 210 (1976) (**Board Review 05**). A protective frisk is intended to reveal concealed weapons on a detained person and “should not be extended beyond its purpose or securing the safety of an officer,” *People v. Lipscomb*, 179 A.D. 2d 1043 (1992) (**Board Review 09**).

While Sergeant Oktrova cited the odor of marijuana as a basis for his detainment of a civilian, Police Officer Mestre denied that such an odor existed during this traffic stop. Sergeant Oktrova stated that he was not aware of what Police Officer Mestre was doing during this traffic stop because he was focused on his own detained civilian and could not account for why Police

Officer Mestre had the rear passenger exit the vehicle. Police Officer Mestre confirmed that she was acting on her own volition and not taking instructions from a supervisor during this time.

Police Officer Mestre stated that her reason for asking § 87(2)(b) to exit the vehicle was related to his furtive hand motions. However, Police Officer Mestre also stated that at this point in the incident she had established that these hand motions were related to the concealment of alcohol and that she did not intend to take any enforcement action in regards to the discovery. Police Officer Mestre further stated that she allowed § 87(2)(b) to finish his alcohol.

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: On August 9, 2017, Sergeant Amadeo Oktrova stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that there were tinted windows on the beige, Nissan sedan that § 87(2)(b) was driving on the incident date.

§ 87(2)(b) stated that the vehicle that he was driving on this day had tinted windows but that these would not have been visible to the officers because all of his tinted windows were rolled down. Sergeants Oktrova and Aliffi and Police Officer Vanduzer all stated that they personally observed tinted windows on § 87(2)(b)'s vehicle, including his rear window. Police Officer Mestre denied personally observing tinted windows but recalled hearing other officers discuss tinted windows when the vehicle stop was initiated.

Section 375 (12-a) of the New York State Vehicle and Traffic Law states that tinted windows are a traffic violation (**Board Review 10**).

§ 87(2)(g)

Allegation (G) Abuse of Authority: On August 9 2017, Police Officer Brian Vanduzer frisked § 87(2)(b)

Allegation (H) Abuse of Authority: On August 9, 2017, Police Officer Gina Mestre frisked § 87(2)(b)

It is undisputed that Police Officer Vanduzer had § 87(2)(b) exit his vehicle and submit to a frisk shortly after his vehicle was stopped on August 9, 2017. It is further undisputed that Police Officer Mestre asked § 87(2)(b) to exit the vehicle and submit to a frisk at the same time.

§ 87(2)(b) stated that Police Officer Vanduzer informed him that he had an open warrant prior to asking him to step out of the vehicle for a “safety” related frisk. Police Officer Vanduzer cited a gravity knife in plain view in the center console as the reason for asking § 87(2)(b) to exit the vehicle for a frisk. Police Officer Mestre and Sergeant Oktrova both stated that they observed a knife in the same location. § 87(2)(b) and § 87(2)(b) both denied that there was a knife in the center console of the vehicle at the time that they were ordered out of the vehicle.

Police Officer Mestre stated that she smelled “a strong odor” of marijuana in the vehicle but this statement was not corroborated by any other officer. Police Officer Mestre did not observe any other evidence of marijuana use and did not ask the men about the marijuana odor.

The men were patted down by the front door panels before being directed to the back of the vehicle. § 87(2)(b) stated that he was not placed in handcuffs at this time and was later permitted to sit in his vehicle while the officers spoke to each other. Police Officers Vanduzer and Mestre stated that both men were considered under arrest at this time because neither had claimed custody of the knife and therefore custody was attributed to both men.

Sergeant Oktrova stated that § 87(2)(b) was considered under arrest prior to the discovery of the gravity knife because he had not turned himself in for arrest in regards to the open complaint report that he had been detained for on July 22, 2017. Sergeant Oktrova stated that § 87(2)(b) had not been provided with a specific timeline but had been ordered to turn himself in within days of his release. Neither Police Officer Mestre nor Police Officer Vanduzer cited this as a reason for the detainment of the two men.

Two summonses were prepared for § 87(2)(b) and were given to § 87(2)(b) and § 87(2)(b) **(Board Review 02-03)**. A property voucher prepared by Police Officer Vanduzer indicates that two separate gravity knives were taken from the vehicle **(Board Review 11)**.

The odor of marijuana smoke alone is sufficient to provide police officers with probable cause to search an automobile and its occupants, People v. Chestnut, 43 A.D. 2d 260 (1974) **(Board Review 12)**. When stopping a motorist for a traffic infraction, an officer may frisk the motorist based upon a reasonable suspicion that the motorist is armed, even if there is no cause to believe that the motorist has committed a crime. Arizona v. Johnson, 555 U.S. 323 (2009) **(Board Review 13)**.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation (I) Abuse of Authority: On August 9, 2017, Police Officer Gina Mestre searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that Police Officer Mestre searched § 87(2)(b)'s vehicle. The search of § 87(2)(b)'s vehicle was conducted by Police Officer Mestre after § 87(2)(b) and § 87(2)(b) had been frisked and instructed to stand at the back of the vehicle. None of the officers interviewed in regards to this incident reported seeing suspicious or furtive movements. Police Officer Mestre stated that her concern for her personal safety abated after she directed the two men to stand at the back of their vehicle.

§ 87(2)(b) stated that Police Officer Mestre conducted a search of his vehicle after he had been frisked and instructed to stand at the back of the vehicle. § 87(2)(b) stated that after the vehicle search was concluded, he was permitted to sit inside of his vehicle while Police Officer Mestre opened and looked into the trunk. Police Officer Mestre stated that she searched the vehicle interior on her own volition but did not know if she looked into the trunk.

An officer's observation of an illegal weapon in plain view within a vehicle provides that officer with probable cause to search the vehicle, a principle commonly referred to as the "plain view doctrine." People v. Griffin, 212 A.D. 2d 967 (1995) (**Board Review 14**). An officer may not search the area where an individual might gain possession of a weapon if the individual in question is in no position to obtain objects in that area of the car at the time of the search. People v. Derrell, 26 misc. 3d 697 (2009) (**Board Review 15**). The odor of marijuana smoke alone is sufficient to provide police officers with probable cause to search an automobile and its occupants, People v. Chestnut, 43 A.D. 2d 260 (1974) (**Board Review 12**).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (**Board Review 16**).

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- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- This is the first CCRB complaint involving § 87(2)(b) [REDACTED] **(Board Review 18)**.
- Sergeant Oktrova has been a member of the NYPD for seven years and has had four prior CCRB allegations within two cases and no substantiated allegations filed against him.
§ 87(2)(g) [REDACTED] **(Board Review 19)**.
- Police Officer Vanduzer has been a member of the NYPD for four years and has no prior CCRB allegations against him **(Board Review 20)**.
- Police Officer Mestre has been a member of the NYPD for four years and has had four prior CCRB allegations within one case and no substantiated allegations filed against her.
§ 87(2)(g) [REDACTED] **(Board Review 21)**.

Mediation, Civil and Criminal Histories

This case was not suitable for mediation due to § 87(2)(b) [REDACTED]
[REDACTED] The Comptroller's Office of the City of New York has confirmed that they do not have a Notice of Claim on file for this incident **(Board Review 22)**. § 87(2)(b) [REDACTED]
[REDACTED] **(Board Review 23)**. § 87(2)(b) [REDACTED]
[REDACTED]'s criminal history could not be located **(Board Review 24)**.

Squad No.: 6

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date